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Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-445

RICHARD T. HAMILTON,

Petitioner,

vs.

STATE OF NEW JERSEY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RICHARD T. HAMILTON,

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vs.

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Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COUNTER-STATEMENT OF THE CASE

On October 20, 1971, the petitioner was charged in Bergen County Indictment No. S-1469-71 with possession of heroin, contrary to *N.J.S.A.* 24:21-20 (a) (1), possession of heroin with intent to distribute, contrary to *N.J.S.A.* 24:21-19, and possession of a dangerous weapon, contrary to *N.J.S.A.* 2A:151-41. (Pa-1).

Prior to trial, petitioner's motion to suppress pursuant to *R.* 3:5-7 of the Rules Governing New Jersey Courts was heard by the

Hon. Fred C. Galda, J.C.C. The motion was denied.

Petitioner was tried before Judge Galda and a jury, and was found guilty of unlawful possession of heroin. He was found not guilty of the weapons charge. A mistrial was declared with respect to the charge of possession of heroin with intent to distribute. Petitioner was sentenced to not less than three years nor more than five years in the New Jersey State Prison. (Pa-115).

The denial of the motion to suppress was appealed to the Superior Court, Appellate Division. (Pa-116). The denial was affirmed on January 24, 1973. (Pa-118). A petition for certification to the New Jersey Supreme Court was filed by petitioner on May 29, 1973, which was denied. (Pa-120).

This Petition for Certiorari was filed on September 7, 1973.

COUNTER-STATEMENT OF FACTS

Officer Albert Adcock had been an employee of the Bergen County Police Department for the last six and one half years. (1T2-12 to 2-14).[1] At 4:10 A.M. on August 30, 1971, he observed a 1966 Pontiac with a Pennsylvania license plate in the area of the George Washington Bridge. (1T2-22 to 3-7). Officer Adcock stated that his attention was drawn to this car because it was dirty, except for a clean, new license plate. He followed the car along Route 46 and observed the vehicle enter a gas station. (1T3-8 to 3-12).

The officer entered an adjacent gas station and waited for the petitioner to conclude his business. Petitioner then exited the gas station onto the highway and proceeded westerly at a high rate of speed. In fact, Officer Adcock testified that he was forced to pursue it at 75 to 80 miles per hour in order to overtake it. (1T3-13 to 3-24). The petitioner then cut off onto an exit ramp. Officer Adcock ordered him to pull over; petitioner complied. (1T3-25 to 4-7).

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[1] "1T" refers to the testimony taken on January 24, 1972. "2T" refers to the testimony taken on March 6 and 7, 1972, the adjourned date of the hearing.

Once stopped, Officer Adcock requested petitioner's license and registration. The petitioner, however, was unable to produce either a valid license or a valid registration. He did produce two slips of white paper. According to Officer Adcock, each piece of paper had "Atlantic City" across the top; one such slip said "reported registration missing," and the other said "reported license missing." Adcock also stated that in his opinion, neither was signed by a police officer. (1T4-12 to 4-19). When asked for an explanation, the petitioner told the officer that his license and registration had been stolen a week earlier in Atlantic City. (1T4-20 to 4-24). The petitioner was unable to provide any other identification because, as he told the officer, his wallet was also stolen at the same time. (1T4-25 to 5-3). Officer Adcock finally asked the petitioner if he had anything at all that would substantiate his ownership of the car—such as insurance papers, repair slips, and the like—and the petitioner replied that he did not. (1T-4 to 5-10).

Officer Adcock then requested the petitioner to open the glove compartment of his automobile. Inside was an expired Pennsylvania permit and registration for a similiar make automobile bearing a different license plate number. In addition, there was an automobile serial number on the expired registration. (1T5-10 to 5-22). Officer Adcock then testified as follows:

> Q. What happened then?
> A. I asked him if he could tell me exactly what was in the trunk of the vehicle, exactly the items that were in the trunk of the vehicle.
> Q. What was the purpose of this question?
> A. This was a policy or it's a thing that you do. It's a quick way to find out of somebody owns the car or not by asking them if they've had the car a while what's in the trunk. If they can name the items in the trunk, you can pretty well assume the car is their's. It's not positive, but it gives you a good indication of which direction you're going to go.
> (1T8-3 to 8-14).

The petitioner agreed to open the trunk, and Officer Adcock asked him for the keys. At that time, he noticed that the keys were

not original General Motors keys but rather duplicate blanks. (1T8-20 to 8-25). The petitioner described the contents of his trunk as consisting of a spare tire, a jack, and several small boxes. When the trunk was opened, the objects described by the petitioner were in the trunk. (1T9-1 to 9-7).

Adcock then asked the petitioner about the contents of the small boxes in the trunk. Petitioner initially replied that "It could be anything," but later added that they contained small bags used for the packaging of garlic seed. Adcock then asked if they might be glassine envelopes, and the petitioner said they were not. Adcock observed that the boxes were all sealed with the exception of one, but the flaps on this unsealed box were closed. He opened it and observed a quantity of glassine envelopes. Adcock then called for assistance. (1T9-1 to 9-25).

After assistance arrived, Adcock walked toward the front of the car, opened the driver's door, and squatted down to check the serial number of the car against the number recorded on the expired registration. He stated that the serial number was located on the lower portion of the door jamb. As the officer testified:

> Q. What did you observe at this time?
>
> A. I squatted down, got my flashlight out to check the serial number. While I was looking at the serial number plate, I looked up eye level and in the center of the dashboard was a bag, a paper bag, and the bag was ripped and inside of the bag I could see what appeared to be a glassine bag or wrapping with a white substance in it.
> (1T10-16 to 10-22).

The substance proved to be heroin, and it was later the subject of the petitioner's conviction.

On cross-examination, Adcock stated that he did not remember if he had ever given the petitioner a speeding ticket. (1T14-12 to 14-16). He further stated that he did not recognize the two slips of paper originally handed to him by the petitioner, and that he had never seen anything like them before. (1T16-1 to 16-10). He admitted that upon opening the trunk, it was impossible to see inside the boxes since the flaps were closed. (1T23-4 to 24-4).

The petitioner testified in his own behalf. On the night in question, he was coming from the George Washington Bridge and was on his way home toward Philadelphia. (2T6-15 to 6-20). He stopped for gas, and then left the gas station at a slow rate of speed. In fact, the petitioner stated that he observed Adcock's police car in the adjacent gas station and purposely drove slowly. (2T6-23 to 7-15).

Upon being stopped by the officer, the petitioner was asked for his license and registration. (2T7-21 to7-23). The petitioner insisted that he showed the officer notarized documents indicating that he had reapplied for his license and registration. The petitioner claimed he had received them from Abatt's Automobile Service in Philadelphia, and that these documents were valid for a period of 30 days, during which time it was legal to drive in Pennsylvania. (2T11-4 to 11-17).

The petitioner at trial, was unable to produce copies of these documents, claiming he had misplaced them. In addition, he was not able to produce the expired registration and license in his possession at that time, because, according to his testimony, the car was stolen after the events on the night in question. (2T10-17 to 11-25). He also claimed that he was coerced into opening the trunk by Officer Adcock. (2T13-8 to 14-5). The petitioner stated that it was impossible to observe the bag with heroin in it while looking at the serial number of the car, because he had changed the location of the serial number after he had purchased it. (2T18-2 to 18-16). Finally, it was revealed that the petitioner had a criminal record which included possession of marijuana and interstate transportation of a motor vehicle. (2T18-17 to 19-6).

REASONS FOR DENYING THE WRIT
POINT I

THE DISCOVERY OF THE BAG CONTAINING HEROIN FOUND UNDERNEATH THE DASHBOARD WAS NOT THE RESULT OF IMPROPER POLICE CONDUCT.

Petitioner contends that Officer Adcock engaged in an unreasonable and illegal course of conduct which resulted in his detention for an unduly prolonged period of time. As a result, he claims that the discovery of the heroin was a fruit of his illegal detention, and therefore must be suppressed. The Respondent respectfully submits that the discovery of the heroin was not the result of improper police conduct.

The trial court, in making its factual determinations at the Hearing on the Motion to Suppress, found the testimony to indicate that Officer Adcock observed petitioner driving west on Route 46 at approximately 75 to 80 miles an hour. It is axiomatic that if a violation of the motor vehicle laws is observed, the driver may be stopped and issued a summons or arrested. Since speeding is a motor vehicle offense under *N.J.S.A.*39:4-98, the petitioner's stop and subsequent arrest would be entirely proper.

Furthermore, law enforcement officials are expressly authorized under *N.J.S.A.* 39:3-29 to stop motor vehicles at random and demand production of the operator's driver's license and motor vehicle registration. *State v. Kabayama,* 98 *N.J. Super.* 85 (App. Div.) 236 *A.2d. 164 (1968),* aff'd. *o.b.* 52 *N.J.* 507, 246 *A.2d.* 714 (1968). The legality of such stops, within the context of the Fourth Amendment, cannot seriously be questioned. For example, in *Lipton v. United States,* 348 *F. 2d.* 591 (9th Cir. 1965), an officer stopped aminor driving an out-of-state automobile on a hunch aroused by the driver's youthful appearance. The driver could not produce either a license or identification. Upon further inquiry, the officer was able to obtain more detailed information. In upholding the stop, the court stated:

> "If stopping appellant for the sole purpose of inquiring whether he held a license for the activity in which he was engaged was in any sense a 'seizure,' it

was not an 'unreasonable' one, and did not violate any right given appellant by the Fourth Amendment." *Id.* at 593.

In addition, in New Jersey, once a driver is detained in this manner, the failure to produce a registration or a valid license empowers the officer to arrest the driver. See *N.J.S.A.* 39:5-25.

It cannot be disputed that Officer Adcock was acting within his authority in stopping the petitioner for speeding. Nor is it claimed that the search of the glove compartment was invalid. However, petitioner maintains that the subsequent search of the trunk and the cardboard box therein was unconstitutional because no consent was given, and because it could not be justified as either incident to a valid arrest, or as a limited search to determine ownership of the automobile. As a result, he argues that: (1) the search resulted in his illegal detention, and (2) the discovery of the heroin was the fruit of the illegal search, necessitating it's exclusion from evidence.

A. Petitioner's Failure to Produce a Valid Driver License or Reigstration Certificate, Coupled With the Circumstances Confronting Officer Adcock, Provided the Officer with Probable Cause to Search the Trunk and Box Therein.

The Fourth Amendment of the United States Constitution protects against only unreasonable searches and seizures. The exclusionary rule is a judicial mechanism intended to enforce that protection by prohibiting the introduction of illegally seized evidence in criminal prosecutions. *Mapp v. Ohio*, 367 *U.S.* 643 (1961). This proscription is directed toward the overzealous police officer who would utilize his office to invade unreasonably the privacy of an individual. The rule is not designed to rectify the wrong already done, but to deter continued or future insolence in office, thereby protecting the reasonable expectations of privacy of individual citizens. Yet, suppression of such evidence does not penalize the insolent. Instead, the right of the innocent to be protected from crime is impaired, while at the same time the image of justice is eroded. The law-abiding citizen loses as the rate of crime spirals and the guilty go free. See *State v. Bisaccia*, 58 *N.J.* 586, 279 A.2d. 675 (1971).

The rights of the law-abiding citizen are no less than those of the criminal. But the Bill of Rights is not intended to apply only to the innocent. Thus, in each case where suppression is sought, the court is called upon to reconcile competing values. *State v. Davis*, 50 *N.J.* 16,231 A.2d. 793 (1967), *cert.* denied 389 *U.S.* 1054 (1968). In striking this balance, the court must determine whether the character of the particular intrusion upon the person or his property was reasonably appropriate under the circumstances confronting the police officer when the search was made. *Terry v. Ohio*, 392 *U.S.* 1,22 (1968).

The test of reasonableness cannot be stated in rigid and absolute terms but is dependent upon the factual transaction viewed in a common sense manner. *State v. Gosser*, 50 *N.J.* 438, 236 *A.2d.* 377 (1967), *cert.* denied 390 *U.S.* 1035 (1968); *State v. Daniels*, 46, *N.J.* 428, 217, A.2d. 610 (1966). Further, in determining the reasonableness of a search, the common and specialized experience and workaday knowledge of a law enforcement officer must be taken into account. *State v. Contursi*, 44 *N.J.* 422, 209 A.2d. 829 (1965).

"What (then) is the test of reason which makes a search reasonable? The test is the reason underlying and expressed by the Fourth Amendment: the history and the experience which it embodies and the safeguards afforded by it against the evils to which it was a response." *Chimel v. California*, 395 *U.S.* 752, 765 (1969), quoting from *United States v. Rabinowitz*, 339 *U.S.* 56, 83 (1950) (dissenting opinion of Frankfurter, J.). The principal evil sought to be forestalled is the invasion of individual privacy by wholesale exploratory searches conducted under the color of governmental authority. *Warden, Maryland Penitentiary v. Hayden*, 387 *U.S.* 294, 301 (1967). Because of that, "The scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." *Terry v. Ohio, supra* at 19.

By proscribing unreasonable searches, the Fourth Amendment does not bar the warrantless search. Historically, the warrantless search has been considered particularly appropriate in situations involving mobile objects. The distinction between stationary structures and those objects capable of being moved was recognized by the First Congress in the 1789 Act of Congress. That Act required a warrant for the search of a building but

permitted a warrantless search of a ship or vessel which federal agents had "reasonable cause" to believe contained merchandise subject to duty.

This distinction based on mobility has been logically extended to situations involving automobiles. Thus, in striking a balance between the right of society to cleanse itself of its criminal elements, and the prophylactic judicial device utilized to deter official insolence, it has often been noted that judicial review of automobile searches is governed by more flexible principles than those normally applied to searches of the home or other fixed establishments. In *State v. Boykins*, 50 *N.J.* 73,232 A.2d. 141 (1967), for example, the court stated:

> **"Here we are not dealing with the privacy of a home, or of a place of business. We are not dealing with something which is immobile and is thereby limited in its usefulness to the criminal element. Rather the subject is a motor vehicle, which, for all its blessings, is high among the agencies of crime. The automobile is perfectly suited for that use. It provides cover for weapons, contraband, and the fruits of crime. It supplies a capacity to strike without warning and to leave without trace. No discussion of crime can ignore the automobile, or the fact that the incidence of crime is hinged directly to the amount of privacy we accord it." 50 *N.J. supra* at 81-82.**

This view was adopted by this Court in *Chambers v Maroney*, 399 *U.S.* 42 (1970). Also see *Cooper v. California*, 386 *U.S.* 58 (1967); *Carroll v. United States*, 267 *U.S.* 132 (1925).

Our courts have consistently sustained limited searches of automobiles based upon the failure of their occupant to produce proof of ownership or valid operator's license. In *State v. Boykins, supra*, for example, it was held that "A traffic violation as such will justify a search for things related to it. So, for example, if the operator is unable to produce proof of registration, the officer may search the car for evidence of ownership . . ." See also *State v Hock*, 54 *N.J.* 526, 257 A.2d. 699 (1969), *cert.* denied 399 *U.S.* 930 (1970); *State v. Campbell*, 53 *N.J.* 230, 250 *A.2d.* 1 (1969). It is the position of the Respondent

that the search in the instant case was limited in scope and was based upon petitioner's failure to produce a registration certificate or a valid driver's license. There thus existed probable cause to search the automobile for evidence of ownership. It is therefore submitted that the instant search falls within the purview of permissible searches and seizures heretofore sanctioned by this Court.

A multitude of factors existed in the instant case which justified the officer's reasonable suspicion that the automobile was stolen:

(a) the fact that the petitioner was driving a dirty automobile with clean license plates;

(b) the petitioner's failure to produce an adequate driver's license or registration;

(c) the two slips of paper he produced in place of the license or registration, and, more particularly, the fact that the automobile was from Pennsylvania and these papers were from New Jersey;

(d) the petitioner's inability to produce any other identification;

(e) the discovery in the glove compartment of an expired Pennsylvania permit and a registration which represented a similar vehicle with different license plates;

(f) the fact that the keys to the car were not General Motors' originals but rather duplicate keys.

It is not disputed that the search of the glove compartment was valid as an attempt to ascertain the ownership of the vehicle. Failing in this endeavor, and without additional police assistance, Officer Adcock asked the petitioner to describe the contents of the trunk. In doing so, he was merely utilizing another device to determine ownership, under reasonably safe circumstances and affording only a minimal intrusion into petitioner's privacy. The test was designed to provide the officer with information con-

cerning the status of the vehicle. In the instant case, the description given by petitioner was general in nature, and the contents of the trunk minimal. Thus, under these particular circumstances, although petitioner "passed" the initial test, the information received was insufficient to substantially dispel the officer's suspicions. Taking the test one step further, petitioner was asked the contents of the boxes. The examination of the contents of one of the boxes was, therefore, necessary to measure the truthfulness of the petitioner's response and possibly further dissipate the officers reasonable belief that the vehicle was stolen.

The courts of other states have consistently upheld searches based upon the failure of drivers to produce valid licenses or proof of ownership. See *State v. Rys*, 183 *N.E.* 2*d.* 253 (Neb. 1971); *People v. Goodrick*, 11 *Cal. App.* 3*d.* 216, 89 *Cal. Rptr.* 866 (Cal. 1970); *Wiseman v. State*, 474 *P.* 2d. 671 (Okla. 1970); *People v. Smith*, 62 *Misc.* 2d. 473, 308 *N.Y.S.* 2d. 909 (N.Y. 1970; *People v. Dumas*, 25 *Mich.App.* 575, 181 *N.E.* 2*d.* 621 (Mich. 1970); *Orricer v. State* 181 *N.W.* 2*d.* 461 (S.D. 1970); *Shelton v. State*, 3 *Md.* 394, 239 *A.*2*d.* 610 (Md. 1968); *People v. Prochnau*, 251 *Cal.App.*2*d.* 22, 59 *Cal.Rptr.* 265 (Cal. 1967); *People v. Thomas*, 31 *Ill.*2*d.* 212, 201 *N.E.*2*d.* 413 (1964), *cert.* denied 380 *U.S.* 936 (1965); *People v. Bannan*, 372 *Mich.* 292, 125 *N.W.*2d. 875 (1964); *cert.* denied 379 *U.S.* 645 (1964); see also Annotation, 10 *A.L.R.*3*d.* 314.

Federal courts have also consistently upheld such searches. In *United States v. Jackson*, 429 *F.*2*d.* 1368 (7th Cir. 1970), the Court of Appeals upheld a warrantless search of an automobile which had initially been detained for failure to display a license plate. Defendant was unable to produce any document identifying the owner of the vehicle. The police officer also ascertained that the license number of the defendant's automobile was fictitious. A search of the vehicle uncovered marijuana and counterfeit airline tickets. Supreme Court Justice Clark, retired and sitting by special designation, rendered the majority opinion for the Court. In sustaining the search, Justice Clark stated:

> "In our view the recent case of *Chambers v. Maroney*, 399 *U.S.* 42, 90 *S.Ct.* 1975, 26 *L.Ed.*2*d.* 419 decided by the Supreme Court on June 22, 1970 is dispositive of appellant's point. There Mr. Justice White found that

> the rule of permissibility extended to a 'warrantless search, based on probable cause, of an automobile which, having been stopped originally on a highway, is parked outside the Court House.' This is far cry from this case where the officers while still on the scene of the arrest were informed by police radio that the single license plate on appellant's car was in fact registered to another car and owner. This notice itself required a search of the car to find the ownership papers at the least." *Id.* at 1371.

In *Welch v. United States*, 361 *F.2d.* 214 (10th Cir. 1966), *cert.* denied 385 *U.S.* 876 (1968), defendant's vehicle was stopped by a highway patrolman who requested his driver's license and certificate of title. Defendant could produce neither document. The Court held that the officer then had sufficient probable cause for an arrest and for a subsequent search of the contents of the automobile. In upholding the search, the court stated:

> "We agree with the reasoning of the trial court and the application of the most recent search and seizure cases to these facts. The arresting officer had reasonable grounds for stopping the car and inquiring of Manning concerning his driver's license and certificate of title. When he said he had none, the officer undoubtedly had probable cause for arresting him for driving without a license in violation of State law. As the trial court observed, the cursory search before formal arrest may be subject to some criticism, but it is plain that the formal arrest was not based upon what the cursory search revealed, but upon the driver's statement that he had neither driver's license nor certificate of title to the car he was driving. Having made a lawful arrest, the subsequent search of the contents of the car at the time and place of arrest was appropriately incidental thereto." *Id.* at 215.

In *United States v. Owens*, 346 *F.2d.* 329 (7th Cir. 1965), *cert.* denied 382 *U.S.* 878 (1968), a police officer stopped defandant's car for speeding on the Pennsylvania Turnpike. Upon

questioning, the officer determined that the vehicle was registered in another individual's name. The officers suspected that the car was stolen and questioned one of the defendants about the contents of the vehicle's trunk. Defendant thereafter opened the trunk revealing three suitcases. The officer opened one of these suitcases and found a hypodermic needle as well as other narcotics paraphernalia. The Court of Appeals sustained the search, holding that the arrest for speeding was not a mere excuse for an exploratory investigation. In this regard, see also *Unitd States v. Reid*, 415 *F.2d.* 294, (10th Cir. 1969) *cert.* denied 397 *U.S.* 1022 (1970). After observing that the license plate on the vehicle has expired, police officers found defendant sleeping in the vehicle. As a result of the motor vehicle violation, the glove compartment was searched revealing evidence of a crime.

In *Sumrall v. United States*, 382 *F.2d.* 351 (10th Cir. 1967). *cert.* denied 389 *U.S.* 1055 (1968), police officers had probable cause to arrest defendant without warrant for either speeding or driving without a proper license. Having made such lawful arrest, the subsequent search of defendant at the time and place of arrest was found to be appropriately incidental thereto. In *Draper v. Maryland*, 265 *F.Supp.* 718 (D.Md. 1967), while on routine patrol, a Maryland State Trooper stopped the vehicle for a routine investigation and license check. Defendant had no license and the registration was in another person's name. The subsequent search of the vehicle was upheld on this basis.

The foregoing State and Federal holding patently demonstrate that the test utilized by Officer Adcock in searching the trunk and one of the boxes therein was valid in view of petitioner's inability to produce a valid registration or driver's license. The arresting officer clearly possessed reasonable grounds to suspect that the vehicle was being driven without the consent of the owner, and thus was juustified in searching for evidence of ownership. Officer Adcock's conduct, when considered in light of the totality of the circumstances, was clearly reasonable under Fourth Amendment Standards.

B. The Search of the Trunk and the Box Therein Was Valid as a Limited Search under the Circumstances Encountered by Officer Adcock.

This Court has recognized that the concept of probable cause is not the sole criterion by which to judge a search. Thus, in *Terry v. Ohio, supra*, the Court sustained a limited search in a situation where probable cause did not exist. In its opinion, the Court cautioned that the legality of a search could not be predicated on "inarticulate hunches" or on the subjective "good faith" of the officer. *Id.* at 22. Instead, an objective standard was developed:

> "Would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Ibid.*

Later in *Davis v. Mississippi*, 394 *U.S.* 721 (1969), the Court hinted that a limited detention under proper circumstances for the purpose of obtaining fingerprint records might "be found to comply with the Fourth Amendment even though there is no probable cause in the traditional sense." *Id.* at 727. Thus the "limited search" was recognized to have vitality in an area other than that of the protective search.

Although factually inapposite, the objective test announced in *Terry* appears to be particularly adaptable to investigative techniques which involve a minimal intrusion upon the individual and impart a great benefit to society and law enforcement authorities in the detection of crime. See *Davis v. Mississippi, supra.* The Respondent respectfully suggests that the *Terry* test would be appropriately applied to determine the reasonableness of the search in the case now before the Court.

Although this Court has not yet extended the application of the limited search concept to situations other than those related in *Terry* and *Davis*, lower courts have taken that initiative. For example, in *State v. Braxton*, 57 *N.J.* 286, 271 A.2d. 713 (1970), the New Jersey Supreme Court held that a police officer has the right to check the serial number on the doorpost of a motor vehicle in order to verify ownership. In opening the door for that purpose, the officer was stationed in a position where he had a right to be, and his observation of the barrel of a gun justified his seizure and examination of that object.

Similarly, in United States v. Powers, 439 *F.2d.* 373 (4th Cir.), *cert.* denied 402 *U.S.* 1011 (1971), the court concluded that the identification number of an automobile is within the protection of the Fourth Amendment, particularly where the vehicle's identification number is not in plain view but in a remote and barely accessible area under the car. However, considering the mobility of a motor vehicle, and the expectation of privacy associated therewith, coupled with a legitimate reason for checking the serial number, the court concluded that the action taken by the police officer was appropriate under the circumstances. Accord *Swiatek v. United States*, 450 *F.2d.* 985 (7th Cir. 1971), *cert.* denied 405 *U.S.* 928 (1972).

The objective standard of *Terry* has been further extended in *White v. United States*, 448 *F.2d.* 250 (8th Cir. 1971), *cert.* denied 405 *U.S.* 926 (1972).

There, the police received information that a man, using an assumed name and driving a rented car, possessed counterfeit money. However, the informant further related that his information was not based on his personal knowledge but on hearsay from an unnamed third person. The police determined that a man under the name related to them had rented a car matching the description given. That car was later discovered parked with with its occupant slumped over the steering wheel. The police ordered the occupant out. As defendant was leaving the vehicle, one officer reached into the back seat and pulled out a small plastic bag. The officer opened the bag and uncovered a syringe. At that time defendant was asked to produce his license which had been visibly altered. He was arrested for that offense. However, based on the discovery of the syringe, a warrant was obtained to search the vehicle for narcotics. Although no narcotics were found, counterfeit twenty dollar bills were uncovered. The court considered that the officer's initial approach to the vehicle was similar to an investigative stop. Although the police officers did not have probable cause to arrest or to search, they had reason to pursue their investigation further. Moreover, they had information that the individual involved was from out of town and might soon disappear. The court analyzed the situation in light of the standard announced in *Terry:*

> "We must now analyze whether at the time of the stop 'the facts available to the officer at the moment of

> **the seizure . . . 'warrant a man of reasonable caution in the belief' that the action taken was appropriate' . . . Admittedly at this point there was not probable cause to arrest the man, because the independently verified pieces of information were not of themselves incriminating. However, we think a stop at this point was clearly justified to obtain identification of the suspect. If he was able to present proper identification, the police would then know that either they had the wrong man or that the tip was unreliable in one essential aspect, namely that the man was using a false name. On the other hand, if he did not have proper identification, the tip would then be corroborated in another essential aspect." *Id.* at 252.**

Thus, the court concluded that "the action taken was appropriate. See also *Hollman v. People,* 46 *Ill.2d.* 311, 263 *N.E.2d.* 7 (Sup. Ct. 1970), in which the court upheld the opening of an envelope discovered in the course of a stop and frisk investigation; *Mendoza v. United States,* 365 *F.2d.* 268 (5 Cir. 1966), in which the court upheld a police officer's examination of the arms of the operator of a motor of a motor vehicle during the course of a routine traffic arrest. *Cf. United States v. D'Avanzo,* 443 *F.2d.* 1224 (2d Cir. 1971) *Cert* denied 404 *U.S.* 850 (1972), in which the court gave great weight to the minimal character of the intrusion involved in an examination of the contents of a dump truck not visible without actually climbing onto the truck. See also *Lindsey v. United States,* 451 *F.2d.* 701 (3rd Cir. 1971), *cert* denied 405 *U.S.* 995 (1972), which relaxed the rules governing stop and frisk "searches" by airport security personnel.

When Officer Adcock questioned petitioner with respect to the contents of the boxes, he answered "It could be anything." Later he indicated that the boxes contained small bags used to package garlic seeds. The suspicious nature of these responses, when reinforced by the unusual circumstances already confronting the officer, alerted him to the possibility of wrongdoing, not only with respect to the status of the vehicle, but also with respect to other criminal activity.

An officer's decision regarding a search and seizure must be drawn by an act of judgment formed in the light of the particular situation and with account taken of all the circumstances."

Brinegar v. United States, 338 *U.S.* 160, 176 (1949). Police officers are trained in the prevention and detection of crime, and thus events which might normally go unnoticed often indicate to the trained eye that something is amiss. The police would be derelict in their duties if they did not investigate such events. *State v. Gray*, 59 *N.J.* 563,285 A.2d.1 (1971). Confronted with a multitude of suspicious circumstances, Offficer Adcock had the right to make a limited search of the trunk and its contents.

Petitioner additionally contends that the search cannot be justified since exigent circumstances were not present. On the contrary, the mobility of the automobile with its attendant capacity for evasion compelled the officer to investigate immediately. *Chambers v. Maroney, supra.*

Since the search of the trunk and the box therein was valid, the discovery of the heroin cannot be considered a fruit, and was therefore properly admitted.

C. Assuming, *Arguendo*, the Illegality of the Trunk Search, the Discovery of the Heroin Was Not a Fruit of the Illegal Search.

Petitioner contends that the discovery of the heroin under the dashboard was a fruit of the illegal search of the trunk, necessitating the exclusion of the heroin from evidence. He argues that Officer Adcock had been "illegally sensitized" to the possibility of drug traffic as a result of the trunk search, and that his "nearly super-human perception" of the bag's contents would not have been made absent such search. The Respondent respectfully submits that even assuming, *arguendo*, the illegality of the trunk search, the discovery of the heroin was clearly independent of the search and was properly admitted.

It is true that evidence obtained through an illegal search or seizure cannot be used in a criminal prosecution. *Mapp v. Ohio, supra.* Thus, the taint of the original, unconstitutional search is to be viewed as encompassing not only the illegally seized evidence, but also evidence subsequently discovered through information acquired in the search. *Silverthorne Lumber Co. v. United States*, 251 *U.S.* 385 (1920).

However, even though the discovery of evidence can be traced back to a constitutional violation, that evidence may still be admissable. Evidence will not be treated as the fruit of the

poisonous tree simply because it would never have been acquired "but for" the illegal activity. The controlling question in each case is:

> "Whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun v. United States*, 371 *U.S.* 471 (1971).

For if those means are substantially removed and distinguishable from the illegality, nothing requires application of the exclusionary rule. *Harrison v. United States*, 392 *U.S.* 219 (1968).

As noted above, once petitioner failed to produce his license and registration, the officer was completely justified in searching for evidence of ownership. Having obtained police assistance, Officer Adcock took the most expedient step by checking the serial number in order to determine the car's status. Clearly, the discovery of the glassine bags in the trunk did not lead to the search for the serial number of the vehicle, because the officer would have searched for the number in any event. Furthermore, the testimony reveals that the heroin was in plain view of the officer when he was conducting his search, and the trial court was at liberty to credit the officer's testimony in this regard. It would be only natural for a law enforcement official to become suspicious of criminal activity upon seeing a bag hanging from beneath a dashboard, especially in light of the surrounding circumstances, and become sensitized to possible drug traffic.

It cannot be doubted that the search for the serial number was valid. In *United States v. Hull*, 437 *F.2d.* 1 (5th Cir. 1971), an illegal search preceded the obtaining of the vehicle's serial number, and the defense urged suppression of all evidence. The court held that:

> "The vehicle identification came from an independent, lawful source wholly apart from the unlawful search and, therefore, such information together with other facts obtained by its use were properly admitted by the district court." *Id.* at 4.

In *Cotton v. United States*, 371 *F.2d.* 385 (9th Cir. 1967), a police officer investigating a suspicious occurrence detained and questioned an individual relative to his car for purposes of identification. The officer subsequently checked the car's serial number, and it was determined that the defendant was masquerading as the owner. The court held that it would limit the right to check the serial number to those cases where there is a legitimate reasn to do so. Under these circumstances, merely to check the serial number in order to more positively identify the car is reasonable and does not constitute a search. *Id.* at 393. The court further observed:

> "(W)e are of the opinion that, when a policeman . . . has reasonable cause to belive that a car has been stolen, or has any other legitimate reason to identify a car, he may open a door to check the serial number" . . . *Cotton v. United States, supra,* at 394; accord, *United Staes v. Johnson, supra,* at 441.

See also, *United States v. Williams*, 436 *F. 2d. 116 (9th Cir. 1970).*

Even assuming, *arguendo,* the illegality of the trunk search, it is respectfully submitted that the discovery of the heroin was not a fruit of that search. As will be shown in Point II, *infra,* it was discovered in plain view during a valid search for the vehicle's serial number and was accordingly properly introduced into evidence.

D. The Detention of Petitioner by the Police Officer was Valid.

As indicated above, Officer Adcock was clearly justified in stopping petitioner for speeding. Furthermore, the failure of petitioner to produce a valid driver's license or registration supplied the officer with probable cause to search the vehicle for evidence of ownership. However, the petitioner argued that after searching the glove compartment of the car, Officer Adcock should have immediately checked the serial number of the car with that found on the registration card in the glove compartment, in order to establish ownership with a minimal amount of interference with petitioner's personal security and privacy. Since he did not do this until (1) the trunk had been opened; (2)

the contents of a box examined; (3) petitioner had been patted down; (4) petitioner was ordered to roll up his sleeves; and (5) police assistance was summoned, petitioner contends that his detention was prolonged and unreasonable. Such a contention lacks substance.

Initially, it is to be noted that Officer Adcock had the right to "pat down" the petitioner to remove any weapons which the latter might seek to use in order to resist arrest or effect his escape, such action being valid either as incident to an arrest, *Chimel v. California*, 395 *U.S.* 752 (1969), or necessary for the protection and safety of the officer under the particular circumstances of the case. *Adams v. Williams*, 407 *U.S.* 143 (1972); *Terry v. Ohio, supra.*

Petitioner's testimony with respect to being ordered to roll up his sleeves was contradicted by Officer Adcock's testimony, and was not a part of the trial court's factual determinations. It can, therefore, be dismissed.

Finally, as shown above, the search of the trunk and boxes therein was valid, and did not violate petitoner's Fourth Amendment rights. Officer Adcock's course of conduct was dictated, to a large extent, by concern for his personal safety. He engaged in those actions which could be conducted without police assistance, and resulting in minimal intrusions into petitioner's privacy in an attempt to determine ownership of the car. It was only after such attempts failed to dispel the officer's doubts as to ownership that he summoned police assistance, in order to safely check the serial number located at the bottom of the door jamb.

Petitioner's argument that an immediate check of the serial number was mandated falls of its own weight. A correlation of the expired registration card with the serial number would have added little toward determining ownership of the car, since petitioner was without identification. Therefore it was not, in any event, the most expedient step to take. Furthermore, police officers are not bound by a rigid course of conduct which must be adhered to in such a situation, but instead must and should act according to the particular circumstances encountered in each case. It cannot seriously be advanced that the detention of petitioner in the instant case, encompassing approximately ten minutes, can be said to be unduly prolonged and violative of Fourth Amendment standards.

The Respondent respectfully submits that the detention of petitioner by Officer Adcock was valid. The discovery of the heroin, therefore, cannot be said to have been a fruit of that detention.

POINT II

THE DISCOVERY OF THE HEROIN IS JUSTIFIED UNDER THE "PLAIN VIEW" DOCTRINE.

Petitioner argues that when Officer Adcock opened the door to obtain the serial number, he was there on a pretext in that he was actually looking for evidence of illegal drug traffic. He, therefore, maintains that the "plain view" doctrine is inapplicable. The Respondent respectfully submits that the discovery of the heroin was valid under the "plain view" doctrine.

In *Harris v. United States*, 390 *U.S.* 234 (1968), petitioner was arrested for robbery when entering his car, and the vehicle was later towed to the precinct as evidence because it had been seen at the robbery site. Pursuant to a police regulation, and without a warrant, the arresting officer searched the car to remove all valuables. While securing the doors and windows, he saw an automobile registration card in the name of the robbery victim on the metal stripping over which the door closed. The Court, in a *per curiam* opinion, held that the card was properly admitted into evidence, stating:

> "Once the door had lawfully been opened, the registration card, with the name of the robbery victim on it, was plainly visible. *It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced into evidence." Id.* at 235. (emphasis added).

As noted above, Officer Adcock had the right to check the vehicle's serial number once petitioner failed to provide a valid license and registration. Because he was without police assistance, he postponed this check until after other steps had been taken to determine ownership. The contention that in making that search, he was on a pretext, is unsupported by the facts of the case.

The Respondent, therefore, respectfully submits that the discovery and seizure of the heroin fell with the "plain view" doctrine, and that it was properly introduced into evidence.

In light of the above, it is the Respondent's view that petitioner has failed to demonstrate sufficient grounds for granting certiorari, since the decision is in accord with applicable decisions of this court as well as other state and federal courts.

CONCLUSION

For all the foregoing reasons, respondent, State of New Jersey, respectfully prays that the writ of certiorari sought in the above named petition pending before this court not issue.

Respectfully submitted,

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